

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

UNITED STATES OF AMERICA

v.

ANDRE RETAY TONEY (8)

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CRIMINAL NO. 4:02-CR-00088

**REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

Pending before the Court is the request for revocation of Defendant's supervised release. After the District Court referred the matter to this Court for a report and recommendation, the Court conducted a hearing on August 6, 2013, to determine whether Defendant violated his supervised release. Defendant was represented by Frank Henderson. The Government was represented by Andy Williams.

On July 2, 2003, Defendant was sentenced by the Honorable Paul Brown, United States District Judge, to a sentence of 92 months imprisonment followed by a 4 year term of supervised release for the offense of conspiracy to manufacture, distribute, possess, and dispense cocaine base (crack) marijuana. Defendant began his term of supervised release on August 21, 2009. This term of supervised release was revoked on December 28, 2010, and Defendant was sentenced to 20 months imprisonment consecutive with any other sentence being served followed by an additional 28 month term of supervised release. Defendant began this new term of supervised release on November 20, 2012. On November 20, 2006, the case was transferred to the Honorable Richard A. Schell, United States District Judge.

On April 22, 2013, the U.S. Probation Officer filed a Petition for Warrant or Summons for Offender Under Supervision (the "Petition") (Dkt. 628). The Petition asserts that Defendant violated the following conditions of supervision: (1) Defendant shall notify the probation officer at least ten days prior to any change in residence or employment.

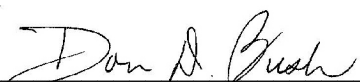
The Petition alleges that Defendant committed the following violations: (1) Defendant was residing at the Reid Community Correctional Facility located at 10950 Beaumont Hwy, Houston, Texas, as a condition of his Texas State Parole. On or about March 16, 2013, Defendant failed to return to the facility and notify the U.S. Probation Office of his change in residence. At the time this petition was filed, Defendant's whereabouts were unknown.

At the hearing, Defendant entered a plea of true to the alleged violations. Defendant waived his right to allocute before the district judge and his right to object to the report and recommendation of this Court. The Court finds that Defendant has violated the terms of his supervised release and that his supervised release should be revoked.

RECOMMENDATION

Pursuant to the Sentencing Reform Act of 1984 and having considered the arguments presented at the August 6, 2013 hearing, the Court recommends that Defendant be committed to the custody of the Bureau of Prisons to be imprisoned for a term of thirteen (13) months, with no supervised release to follow. The Court further recommends that Defendant's term of imprisonment be carried out in El Reno FCI, if eligible.

SIGNED this 14th day of August, 2013.



DON D. BUSH
UNITED STATES MAGISTRATE JUDGE